IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7770 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KANAIYA @ POKAL SON OF CHAMPAKLAL RANA

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 7770 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

MR D.P. JOSHI, AGP for Respondent State

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 17/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 15.8.2001 passed by the Commissioner of Police, Surat City in exercise of power under Section 3 of the PASA Act. The petitioner seeks to challenge the

said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered 3 registered offences against the detenu under the Bombay Prohibition Act and statements of two anonymous witnesses were recorded by the sponsoring authority on 16.7.2001 and verified on 2.8.2001. The last of the registered offence relates to 23.5.2001. The detaining authority observed that the detenu's activities are that of a boot-legger and are detrimental to public health and public order. The detaining authority recorded a satisfaction that the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

3. The order is challenged mainly on the ground of delay in passing the order resulting into improper exercise of power under Sec. 3 of the PASA Act.

4. Learned AGP Mr. D.P. Joshi has opposed this petition.

5. It is clear from the documents and not disputed by the respondents that the statements were verified on 2.8.2001 and the order was passed on 15.8.2001 i.e. after 13 days. Thus, the order suffers from the vice of delay apparently. If the satisfaction of the detaining authority for the immediate need for detaining the petitioner and for the need for exercise of powers under Section 3 of the PASA Act was genuine, the order would have been passed immediately after verifying, but instead the order is passed after 13 days. The satisfaction therefore for need for exercise of power under Sec. 3 of PASA Act therefore cannot be considered to be genuine in law. The order of detention therefore would vitiate.

5.1 So far as registered offences are concerned, the last offence relates to 23.5.2001, whereas the order is of 15th Aug. 2001 and there is nothing to indicate any livelink between the activity of the petitioner and the order. The petition therefore deserves to be allowed and the same is allowed.

6. The petition is therefore, allowed. Order of detention dated 15th Aug., 2001 passed by the

Commissioner of Police, Surat City is quashed and set aside. Detenu Kanaiya @ Pokal son of Champaklal Rana be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas